

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID ALLEN HAWKINS,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

No. C91-5415 RJB/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION

The Court, having reviewed the petition for writ of habeas corpus, the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 53), objections to the Report and Recommendation (Dkt. 54), respondent's response (Dkt. 55), and the remaining record, does hereby find and **ORDER:**

- (1) The Report and Recommendation carefully and thoroughly reviewed the procedural history and facts related to petitioner's ineffective assistance of counsel claim. The concurs with the magistrate judge that the claims petitioner raises related to Mr. Randolph's performance would constitute a second or successive petition under 28 U.S.C. § 2244; the Ninth Circuit U.S. Court of Appeals has denied petitioner's request to file a second or successive petition. Moreover, petitioner's ineffective assistance of counsel claims, related to his appellate counsel, and related to Mr. Randolph, are without merit. The Court **ADOPTS** the Report and Recommendation (Dkt. 53).
- (2) Petitioner's claims for habeas relief are **DENIED**. This case is **DISMISSED WITH PREJUDICE**.
- (3) On March 10, 2011, petitioner filed a document, requesting that he be granted an extension of time to obtain a Certificate of Appealability. Dkt. 23. That request is **DENIED**. Plaintiff is under the misapprehension that he needs to obtain, from somewhere, a Certificate of Appealability. However, this court is the proper body to decide whether a Certificate of Appealability should be granted. Under Rule 11 of the Rules Governing Section 2254 Cases in the United States District Court,

1 the district court must issue or deny a Certificate of Appealability when it enters a
2 final order adverse to the applicant.

- 3 (4) In the event that petitioner files an appeal with the Ninth Circuit U.S. Court of
4 Appeals, a Certificate of Appealability is **DENIED**, consistent with the analysis
5 and recommendation of the Magistrate Judge.
- 6 (5) The Clerk is directed to send copies of this Order to Petitioner, counsel for
7 Respondent and to the Hon. Karen L. Strombom.

8 DATED this 25th day of March, 2011.

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10 ROBERT J. BRYAN
11 United States District Judge
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